



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32526301

Date: JULY 23, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a video game and digital entertainment company, seeks to permanently employ the Beneficiary as a senior staff graphics programmer. It requests his classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners in this category must demonstrate that noncitizen beneficiaries have received “sustained national or international acclaim” and extensively-documented recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Beneficiary met two of ten initial evidentiary requirements – one less than needed to obtain a final merits determination. On appeal, the Petitioner contends that it also satisfied two additional criteria: evidence of the Beneficiary’s receipt of lesser nationally or internationally recognized awards; and proof of his original contributions of major significance in his field. The company alternatively argues that it has submitted “comparable evidence” to meet these criteria.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the company has met the requisite number of initial criteria by submitting evidence of the Beneficiary’s original contributions of major significance to the video game industry. We will therefore withdraw the Director’s contrary decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify a beneficiary as a noncitizen with extraordinary ability, a petitioner must demonstrate that the beneficiary:

- Has “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seeks to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence must demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).¹

If a petitioner meets either of the evidentiary criteria above, USCIS must make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing a beneficiary among the small percentage at their field’s very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows that the Beneficiary, a Canadian native and citizen, has been programming graphics for video games for about the past 20 years. The Petitioner states that the Beneficiary’s work involves creating algorithms and software to transform digital information into visually compelling images. His work – known as “graphics rendering programming” or “graphics rendering engineering” – includes application of intricate lighting and shading techniques and integration of three-dimensional models underlying the visual aspects of video games.

The Petitioner states that graphics rendering programming plays a critical role in a video game’s overall success, bringing the game creator’s vision to life by polishing the visual field that players see on their screens. Graphics’ degrees of technical and artistic quality determine the extent of players’ sensory and immersive experiences.

The Director found that the Petitioner met the following two initial evidentiary requirements: evidence that the Beneficiary performed in a leading or critical role for organizations with distinguished reputations; and proof of his commandment of a high salary or other significantly high remuneration for services compared to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(viii), (ix). On appeal, the Petitioner contends that it also satisfied two additional criteria: evidence of the Beneficiary’s receipt of lesser nationally or internationally recognized awards for excellence in his field; and proof of his original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(i), (v).

When adjudicating evidentiary criteria, USCIS determines whether “evidence submitted by the petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence.” 6 *USCIS Policy Manual* F.(2)(B)(1). USCIS may not “unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5.” *Kazarian*, 596 F.3d at 1121.

¹ If an evidentiary standard does not “readily apply” to a beneficiary’s occupation, a petitioner may submit “comparable evidence” to establish eligibility. 8 C.F.R. § 204.5(h)(4).

A. Original Contributions of Major Significance

To meet this criterion, a petitioner must submit “[e]vidence of the [noncitizen]’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” 8 C.F.R. § 204.5(h)(3)(v).

When adjudicating this requirement, USCIS first determines whether beneficiaries have made original contributions in their fields. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency then determines whether the original contributions are of major significance in the fields. *Id.*

The Petitioner submitted: letters from former supervisors and co-workers of the Beneficiary and a U.S. professor of visual communication design; video game descriptions; and published articles about video games. The Director acknowledged the Beneficiary’s “many original contributions” to specific video games. But the Director concluded that the Petitioner did not demonstrate that the Beneficiary’s original contributions had major significance in the video game industry.

The letters that the Petitioner provided, however, sufficiently show that the Beneficiary’s programming innovations in specific video games significantly influenced the industry as a whole. The record shows that the Beneficiary has worked on more than 16 major video game projects. But his innovations in a 2005 action role-playing game provide an example of his contributions and their influence on the video game industry. In that game, the Beneficiary implemented a novel real-time physics-based bone system for animated characters. The visual design professor stated that this innovation occurred a year before introduction of the first dedicated processor for hardware-accelerated physics in video games and several years before the addition of dedicated physics processors to video game consoles. The professor stated:

Thus, for [the Beneficiary] to not only conceive of but design and implement this original system in [the game] was a contribution of major significance, as it demonstrated a run-time physics modeling system that can run smoothly on existing consoles without the need for dedicated hardware, necessarily influencing the trajectory of other developers’ own design decisions due to the prominence of [the Beneficiary’s then employer] in the industry.

The letters state that, in the same game, the Beneficiary developed a camera system called “continuous collision detection” that allowed an in-game camera to “smoothly traverse and collide the virtual space” without jarring or sudden jumps when obstacles appeared. The professor stated that the Beneficiary “played a significant early role in demonstrating and popularizing this technology, which has since become standard in the videogame industry and is now widely implemented as a default functionality in . . . popular videogame engines.”

Further, in the same 2005 game, the Beneficiary helped create a streaming system that allowed the game to load areas into memory based on a player’s location or potential location and permitting the game to unload all unneeded areas. The professor stated:

This process of “asset streaming,” as it is now known, is widely utilized today in the videogame industry but was a rarity at the time [the Beneficiary] contributed to [the

game]’s development, having only emerged around the millennium with the advent of home videogame consoles capable of 3D graphics. . . . [The Beneficiary] contributed impactfully to the adoption of in-game data streaming in 3D graphics rendering, a major trend which has facilitated the industry’s focus on open-world (a.k.a. sandbox) video games . . . and driven considerable innovation in the production of photorealistic graphics in the videogame industry.

Thus, the Petitioner has submitted independent, objective evidence that the Beneficiary’s original contributions have had major significance in the video game industry. We will therefore withdraw the Director’s contrary finding.

B. Remaining Arguments

The Petitioner has met the required number of initial evidentiary criteria. Thus, we need not consider the company’s remaining arguments regarding the Beneficiary’s purported receipt of nationally or internationally recognized awards for excellence in his field or other comparable evidence. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal if an applicant did not otherwise meet their burden of proof).

As the Petitioner has met at least three initial evidentiary criteria, USCIS must now conduct a final merits determination. *See Kazarian*, 596 F.3d at 1119-20; 6 *USCIS Policy Manual* F.(2)(B). Rather than make this determination in the first instance, we will remand the matter.

On remand, the Director must determine whether the Beneficiary has sustained national or international acclaim and recognized achievements in his field identifying him as one of that small percentage who have risen to the field’s very top. *See 6 USCIS Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence, even if it does not fit a regulatory criterion or was not presented as comparable evidence. *Id.* The petition’s approval or denial should stem from the evidence’s type and quality. *Id.*

III. CONCLUSION

By submitting proof that the Beneficiary made original contributions of major significance in the video game industry, the Petitioner met the requisite third initial evidentiary criteria.

ORDER: The Director’s decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.